Supreme Court, U. S.
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IN THE

Supreme Court Of The United States

OCTOBER TERM, 1977

No. 77-1148

BOBBY JOE NORRIS ..... *Petitioner*

VS.

STATE OF ARKANSAS ..... *Respondent*

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ARKANSAS

ROBERT L. SHAW
504 Church Street
Post Office Box 1158
Mena, Arkansas 71953

Attorney for Petitioner

TREVATHAN PRINTING COMPANY, NEWPORT, ARKANSAS

TABLE OF CONTENTS

Page

PRAYER 1

OPINIONS BELOW 1

JURISDICTION 1

QUESTIONS PRESENTED 2

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 3

STATEMENT 5

REASONS FOR GRANTING THE WRIT 8

CONCLUSION 12

APPENDIX I — Opinion of the Supreme Court of Arkansas 13

APPENDIX II — Supreme Court of Arkansas Opinion Amended 15

APPENDIX III— Motion to Stay Mandate, Granted 16

APPENDIX IV — Order of Mr. Justice Blackmun Extending the Time Within Which To File Petition for Writ of Certiorari 17

APPENDIX V — Order (Appointing Jury Commissioners) 18

APPENDIX VI — List of Relevant Docket Entries 19

APPENDIX VII — Motion to Quash Venire 20

APPENDIX VIII — Motion to Dismiss 30

APPENDIX IX — Hearing on Motions To Quash Jury Venire and Dismiss 32

APPENDIX X — Order Denying Motion to Dismiss 43

APPENDIX XI — Record Reflecting Petitioner's Exercise of all Pre-emptory Challenges 44

APPENDIX XII — Judgment (Of Trial Court) 45

APPENDIX XIII — Notice of Appeal 46

APPENDIX XIV — Designation of Record 47

TABLE OF CASES

Norris v. State, (Ark.) 536 S.W.2d 298 13

H. Wagman & Co. v. Schafer Motor Freight Service, 4 N.Y.S. 2d 526 10

White v. State, (Ark.) 538 S.W.2d 500 15

Brothers v. State, (Ark.) 546 S.W.2d 715 15

Johnson v. State, (Ark.) 546 S.W.2d 719 15

Mid-State Homes v. Knight, (Ark.) 376 S.W.2d 556 15

Robertson v. Western Baptist Hospital, (Ky.) 267 S.W.2d 395 11

People v. Rapini, (Colo.) 112 P.2d 551 11

Fox v. Standard Oil Co. of N.J., 294 U.S. 87 11

CONSTITUTION AND STATUTES CITED

Constitution of the United States:

Sixth Amendment 3

Fourteenth Amendment 3

28 U.S.C., §1257(3) 2

Arkansas Statutes (1947) Annotated, Volume 7A (1960 Replacement) Cumulative Pocket Supplement,

§82-2601(d) 4

§82-2614.2 4

§82-2617(i)(ii) 4

Arkansas Statutes (1947) Annotated, Volume 4A (1977 Replacement):

§43-1922 9

IN THE

Supreme Court Of The United States

OCTOBER TERM, 1977

No. ———

BOBBY JOE NORRIS ..... *Petitioner*

VS.

STATE OF ARKANSAS ..... *Respondent*

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF ARKANSAS

Petitioner[1] prays that a writ of certiorari issue to review the decision of the Supreme Court of Arkansas in this case.

OPINIONS BELOW

The September 12, 1977, opinion of the Supreme Court of Arkansas is reported at 262 Ark. 188, 555 S.W.2d 560 and is set forth as Appendix I.

JURISDICTION

The opinion of the Supreme Court of Arkansas was entered on September 12, 1977. On October 17, 1977, the Supreme Court of Arkansas denied a timely filed petition for rehearing and entered its amended opinion, Appendix II. On November 7, 1977, the Supreme Court of Arkansas

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[1]The petitioner is Bobby Joe Norris, a resident of Mena, Arkansas.

entered its order staying mandate pending appeal, Appendix III. On January 11, 1978, petitioner timely applied to Mr. Justice Blackmun for an extension of time for filing this petition and an order was entered by Mr. Justice Blackmun on January 11, 1978, extending the time for filing of this petition to and including February 15, 1978. A copy of the last mentioned order is Appendix IV hereto. The jurisdiction of this Court is invoked under 28 U.S.C.A. §1257(3).

QUESTIONS PRESENTED

1. Whether two persons[2] previously participating as jurors in the trial of an accused may subsequently as Jury Commissioners have input into the composition of the panel of veniremen upon retrial of the same accused for the same offense without denial of rights of trial by impartial jury, equal protection of the law and due process of law?

2. Whether the Uniform Controlled Substances Act[3] in effect in Arkansas on January 3, 1975, proscribing de-

[2]Petitioner was previously tried and convicted of the charge in the Polk County, Arkansas, Circuit Court on April 30, 1975. On appeal the Supreme Court of Arkansas reversed and remanded for new trial by opinion entered May 17, 1976. **Norris v. State,** 536 S.W.2d 298. Two persons, John Hill and Vera Petrasek (the latter as foreman) served as petit jurors in the first trial and thereafter were chosen by the same trial judge as Jury Commissioners and contributed to the contents of the Jury Wheel prior to the drawing of a panel of veniremen from which the persons were designated as petit jurors in the retrial of the petitioner.

[3]The Uniform Controlled Substances Act was originally enacted by the 1971 Arkansas General Assembly and set forth as controlled substances those substances specified in Schedules I through V. The 1973 General Assembly amended the Act in certain respects including the addition of Schedule VI pertaining to marihuana and tetrahyrocannabinol exclusively but omitted designating same as "controlled substances." The omission has now been supplied by subsequent amendment of the Act by the 1975 General Assembly. The 1973 law was in effect at the time of Petitioner's accusation.

livery of "controlled substances" in some instances and omitting marihuana in the statutory definition of controlled substances meets constitutional requirement of fair notice that delivery of marihuana was a crime under Arkansas law?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the right to trial by impartial jury guaranteed by the Sixth Amendment to the Constitution of the United States:

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy trial and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

and the Due Process and Equal Protection of the Laws Clauses of the Fourteenth Amendment to the Constitution of the United States:

> "§1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without

due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

and three sections of the Uniform Controlled Substances Act in effect in Arkansas on January 3, 1975:

"Arkansas Statutes (1947) Annotated, Volume 7A (1960 Replacement), 1973 Cumulative Pocket Supplement, §82-2601. Uniform Controlled Substances Act — Definitions. — As used in this Act [§§82-2601 — 82-2638]: . . . (d) "Controlled substance" means a drug, substance, or immediate precursor in Schedules I through V of Article II of this Act."

"§82-2614.2. Substances in Schedule VI — 'Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation, whether produced directly or indirectly from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, which contains any quantity of the following substances, or which contains any of their salts, isomers and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation are included in Schedule VI:

1. Marijuana
2. Tetrahydrocannabinol.'

"§82-2617. Criminal Penalties. — (2) Except as authorized by this Act [§§82-2601 — 82-2638], it is unlawful for any person to manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance.

(1) Any person who violates this subsection with respect to: . . . (ii) any other controlled substance classified in Schedule I, II, III, or VI is guilty of a felony and upon conviction may be imprisoned in the state penitentiary for not less than three (3) years, nor more than ten (10) years, fined not more than $15,000.00 or both";

STATEMENT

On the evening of January 3, 1975, Petitioner was arrested by the Polk County, Arkansas Sheriff and subsequently charged with Violation of the Arkansas Controlled Substances Act. On April 30, 1975, Petitioner was tried, convicted, and sentenced to the maximum prison term by jury verdict in the Polk County Circuit Court. The petit jury deciding the case included John Hill and its foreman, Vera Petrasek. The conviction was reversed on evidentiary matters on appeal to the Supreme Court of Arkansas and a new trial ordered.[4]

In the interim between conviction and reversal the presiding judge of the Polk County, Arkansas Circuit Court, Honorable Bobby Steel, entered an order naming jury commissioners for the 1976 terms of court.[5] John W. Hill and Vera Petrasek were two of the five persons named. The order is set forth as Appendix V.

Upon remand to the trial court for a new trial, Petitioner timely filed formal pleadings entitled Motion To Quash Venire (Appendix VII) and Motion To Dismiss (Appendix VIII). The Motion To Quash Venire with its

[4]**Norris v. State, 536 S.W.2d 298, opinion entered May 17, 1976.**

[5]**By statute the terms of the Polk County, Arkansas Circuit Court commence on the third Monday in April and October every year.**

exhibits challenged the composition of and manner of drawing the panel of veniremen for the October, 1976 term at which Petitioner expected to be and ultimately was tried. In proceedings designated as Hearing On Motions To Quash Jury Venire and Dismiss, (Appendix IX), held on September 14, 1976, the court sustained the objection to the manner of drawing, to-wit: In apparent secrecy without notice, (Appendix IX) [51], and denied the remaining parts of the motion, Appendix IX [56]. See also List of Relevant Docket Entries, (Appendix VI), Court's entry following Motion To Quash Venire, "8-29-76 Denied." Petitioner specifically raised the question presented to this Court in paragraph VII[6] of his motion which was effectively denied as shown by the above-mentioned rulings.

The Court on hearing Petitioner's Motion To Dismiss, set forth in its entirety as Appendix VIII, after colloquy

[6]Paragraph VII of the Motion To Quash Venire (Appendix VII) states as follows: "VII. Defendant specifically states and pleads that as applicable to his case, the jury wheel in Polk County, Arkansas as used and applied in this particular instance denies him a fair trial by impartial jury as guaranteed by Amendment Six to the Constitution of the United States and Article Two, Section Ten of the Constitution of the State of Arkansas, by reason thereof constitutes a denial of due process of law guaranteed the Defendant by Amendment Five of the Constitution of the United States, and Article Two, Section Eight of the Constitution of the State of Arkansas, and abridges his privileges and immunities as a citizen of the United States, denies him due process of law and equal protection of the laws guaranteed by Amendment Fourteen to the Constitution of the United States, Article Two, Section Three of the Constitution of the State of Arkansas and denies him privileges and immunities and equality at law as guaranteed by Article Two, Section Eighteen of the Constitution of the State of Arkansas.

between court and counsel, Appendix IX [56-62],[7] held the question of the validity and application of the law in this instance in abeyance.[8] On September 14, 1976, the court entered its Order Denying Motion To Dismiss, Appendix X.[9] The constitutional question presented to this Court was appropriately raised in paragraph III of the Motion To Dismiss (Appendix VIII).[10]

Subsequently, Petitioner was subjected to trial on October 29, 1976, exhausted all of his peremptory chal-

[7]Appendix IX (61) the Court stated, "The Court: Well, I have no desire to try this case again and if a conviction be imposed to have the Supreme Court reverse and dismiss by virtue of Act 186 of 1973. I think that we ought to be certain about it, and I don't think that it would take over two or three days if you call it to their attention. And, Mr. Shaw, I will very frankly tell you this that in the event the — I would hope that the Prosecuting Attorney would be guided by the Attorney General's opinion in this respect, and, perhaps, if the Attorney General agrees with you, then, the State would move to dismiss the case. If the Attorney General did not agree with you, then I am certain that Mr. Steel, representing the State, would want to try it, and I could be afforded a chance to give my own ruling prior to trial. Now, you had mentioned to me over the telephone that you might like to go up on a writ. If you would prefer to do that, it would be all right with me. I am doubtful that they would hear your writ."

[8]Appendix IX (62) the court stated, "The Court: Well, let me hold that in abeyance pending Mr. Steel's investigation from the Attorney General . . ."

[9]The gist of the order is, "On this day the court after due consideration of the Motion To Dismiss herein filed by Defendant on July 29, 1976, determines that said motion should be, and hereby is denied to which ruling the Defendant has duly objected and his exceptions saved."

[10]Paragraph III of the Motion To Dismiss is, "III. Further, the forestated statute upon which the charge is based is vague, uncertain and ambiguous to the extent that it denies him due process of the law guaranteed by the Fourteenth Amendment to the Constitution of the United States and a similar provision found in Article 2, Section 8 of the Constitution of the State of Arkansas and, accordingly, is unconstitutional both on its face and in its application in this instance. Therefore, the Statute is void and this Court has no jurisdiction to try the Defendant upon any charge based thereon."

lenges in jury selection,[11] Appendix XI, was convicted and Judgment (Appendix XII) entered. Notice of Appeal (Appendix XIII) was timely given and the entire record designated for appeal purposes, Designation of Record, Appendix XIV.

The constitutional issues were properly raised on appeal and decided adversely to Petitioner by the Supreme Court of Arkansas in its opinion entered September 12, 1977, Appendix I.

REASONS FOR GRANTING THE WRIT

This case involves two important constitutional issues. First, the limits to which a state through its system of jury selection may be permitted to go without infringing upon the right of an accused to trial by an impartial jury as guaranteed by the Sixth Amendment. A basic question of constitutional fairness is involved. The second is whether the Uniform Controlled Substances Act in effect in Arkansas in 1975 is sufficient on its face to comply with due process and equal protection clauses of the Fourteenth Amendment.

The jury matter in compelling, especially in view of the Arkansas Court's opinion. While the Court extensively distinguished between the statutory terms of "qualified" and "eligible" it did not realistically discuss the constitutional issue. The Court apparently endeavored to resolve the constitutional aspects of the proposition by concluding in its opinion (Appendix I), the last sentence in the third paragraph, "The circuit judge, *especially in view of the total*

[11]"The defendant shall be entitled to . . . eight (8) peremptory (sic) challenges in all other prosecutions for felony, . . ." Arkansas Statutes (1947) Annotated, Volume 4A (1977 Replacement), §43-1922.

lack of any showing of prejudice, correctly overruled the challenge to the appeal." (Emphasis supplied).

As reflected in the Arkansas Court's opinion (Appendix I) and amendment to opinion dated October 17, 1977 (Appendix II), Polk County, Arkansas has some 8,000 registered voters from which the names of some 600 persons should be selected by jury commissioners[12] as prospective petit jurors. By simple mathematics, each jury commissioner, assuming equal division of duty, would select 125 names. Thus from a total of 600 names, 250, approximately 40%, would be selected by two commissioners. Replenishment of the names by subsequent commissioners might substantially reduce the percentage contributed by each. But the point remains that the opportunity is there, should a commissioner with pre-conceived notions concerning an accused's guilt or innocence desire to take advantage of it. While actual prejudice is not shown in the record — the possibility of prejudice is.

It is conceded by the statutes of the State of Arkansas that an implied bias exists as to a petit juror when that person has been a former juror in the case. Arkansas Statutes (1947) Annotated, Volume 4A (1977 Replacement), §43-1920 states:

> "A challenge for implied bias may be taken: . . . Fifth. Having been one of the former jury sworn to try the same indictment, and whose verdict was set aside, or who were discharged without a verdict. . ."

The implied bias need not be proven, it being established by operation of law. Mr. Hill and Ms. Petrasek are subject to the statutory implication of bias without proof

[12]Five in number according to the order appointing same, Appendix V.

and upon challenge, disqualified as petit jurors in this case. Is it constitutionally permissible to hold them by law as biased to again participate in the case as petit jurors on the one hand and on the other assume that they are not biased by allowing them participation in the petit jury selection process?

"The terms 'jury' and 'trial by jury' are, and for ages have been, well known in the language of the law. They were used at the adoption of the Constitution, and always it is believed, before that time, and almost always since, in a single sense. A jury for the trial of a cause was a body of 12 men, described as upright, well-qualified, and lawful men, disinterested and impartial, not of kin nor personal dependents of either of the parties, having their homes within the jurisdictional limits of the court, *drawn and selected by officers free from all bias in favor or against either party*, (Emphasis supplied) duly impaneled under the direction of a competent court, sworn to render a true verdict according to the law and the evidence given them, who, after hearing the parties and their evidence, and receiving the instructions of the court relative to the law involved in the trial, and deliberating, when necessary, apart from all extraneous influences, must return their unanimous verdict upon the issue submitted to them. *H. Wagman & Co. v. Schafer Motor Freight Service,* 4 N.Y.S. 2d 526, 529, 167 Misc. 681.

Petitioner claims his Sixth Amendment substantive rights to a fair trial by impartial jury applicable to the Arkansas criminal justice system through the due process clause of the Fourteenth Amendment have been seriously impaired.

Arkansas Statutes (1947) Annotated, Volume 7A (1960 Replacement), 1973 Cumulative Pocket Supplement, §82-2601 was in full force and effect at the time petitioner was charged with violation of the Arkansas Controlled Substances Act. At that time §82-2601 defined a "controlled substance" as follows:

> "(d) 'Controlled substance' means a drug, substance, or immediate precusor in Schedules I through V of Article II of this Act."

Marihuana was not designated as a controlled substance at this time in Schedules I through V of Article II of this Act.

The lawmakers own construction of its language, by means of definitions of the terms used, should be followed in the interpretation of the Act or section to which it relates and is intended to apply. See *People v. Rapini,* 107 Col. 363, 112 P.2d 551. The Courts should not enlarge statutory definitions to include a situation or a condition which, it might be assumed, the legislature would have covered by an enlarged definition if its existence had been contemplated. See *Robertson v. Western Baptist Hospital,* 267 S.W.2d 395. A statutory definition supersedes the commonly accepted or dictionary meaning of a term. See *Fox v. Standard Oil Company of New Jersey,* 294 U.S. 87 (1935). Petitioner contends that in absence of express restriction, it is reasonable to assume that a term is used throughout the statute in the same sense in which it is first defined.

The fundamental guaranty of due process is absolute. The due process clause has as its purpose the insuring of the fair and orderly administration of the laws. Basic to the insuring of fair administration of the laws is the belief that

a person must have sufficient notice of activities that are proscribed by the state. Petitioner contends that the Arkansas statutes did not give sufficient notice of proscribed conduct to render him subject to criminal penalties.

CONCLUSION

For the foregoing reasons it is submitted that a writ of certiorari should issue to review the September 12, 1977 decision by the Supreme Court of Arkansas in this case.

Respectfully submitted,

ROBERT L. SHAW
504 Church Street
Post Office Box 1158
Mena, Arkansas 71953
Attorney for Petitioner

APPENDIX I

SUPREME COURT OF ARKANSAS

IN BANC

BOBBY J. NORRIS ..... *Appellant*

vs. No. CR 77-45

STATE OF ARKANSAS ..... *Appellee*

Appeal from Polk Circuit Court

Bobby Steel, Judge

Opinion Delivered: September 12, 1977

Affirmed.

GEORGE ROSE SMITH, Associate Justice.

GEORGE ROSE SMITH, J. The appellant's first conviction upon the present charge of delivery of marihuana was reversed on appeal. *Norris v. State,* 259 Ark. 755, 536 S.W.2d 298 (1976). The essential facts are stated in that opinion. Upon a retrial the appellant was again convicted and was sentenced to imprisonment for three years and to a fine of $1,000.00. We find no merit in either of his contentions for reversal.

First, it is argued that the jury panel should have been quashed because two of the jury commissioners who selected the wheel of jurors had served on a petit jury within the preceding two years and had in fact served on the petit jury which convicted the appellant at his first trial. The pertinent statutes provide: (a) Jury commissioners shall possess the qualifications for petit jurors (Ark. Stat. Ann. §39-201 [Supp. 1975]); (b) a petit juror is ineligible to serve for two years after he is excused from further service

(§39-103); (c) except by consent of the parties a person cannot serve as a petit juror in a case if he was a petit juror in a former trial of the cause (§39-105); and (d) no person shall be appointed as a jury commissioner who has served in that capacity within the preceding four years (§39-202). It is argued that the effect of the statutes is to disqualify the two jury commissioners in question.

The court was right in refusing to quash the jury panel. No possibility of prejudice is shown. In Polk County, with some 8,000 registered voters, the jury wheel should contain the names of at least 600 prospective petit jurors (§39-205). There is no suggestion that either commissioner had any animosity toward the appellant. It would be patently impossible for two jury commissioners, out of a total of from three to twelve commissioners, to influence the selection of more than 600 names in such a way as to adversely affect the trial in a pending marihuana case. Moreover, we do not think the two commissioners weré even technically disqualified to serve. The restrictions upon a petit juror's frequency of service go to his eligibility, not to his qualifications. The legislature has specifically provided only that a jury commissioner be ineligible to serve in that capacity oftener than once every four years. We do not take the statutory reference to a petit juror's qualifications, as distinguished from his eligibility, to disqualify the two commissioners. To the contrary, it may well be desirable that a jury commissioner have prior experience as a juror. The circuit judge, especially in view of the total lack of any showing of prejudice, correctly overruled the challenge to the panel.

Second, it is argued that delivery of marihuana is not

an offense under Arkansas law. Counsel rely upon *White v. State*, 260 Ark. 361, 538 S.W.2d 500 (1976), holding that under the statutes then in force the mere possession of marihuana was not a misdemeanor. That case does not support the present contention, even by analogy, because in two more recent decisions, both directly in point, we have held that the delivery of marihuana is now a felony. *Brothers v. State*, 261 Ark. 64, 546 S.W.2d 715 (1977); *Johnson v. State*, 261 Ark. 13, 546 S.W.2d 719 (1977). Those two decisions are controlling.

Affirmed.

APPENDIX II

SUPREME COURT OF ARKANSAS

BOBBY J. NORRIS ..... *Appellant*

vs. No. CR 77-45

STATE OF ARKANSAS ..... *Appellee*

Opinion amended: October 17, 1977.

Rehearing denied; opinion amended.

GEORGE ROSE SMITH, Associate Justice

The following is substituted for the third sentence in the third paragraph of the opinion:

Polk County has some 8,000 registered voters, as we know by judicially noticing the records in the Secretary of State's office. *Mid-State Homes v. Knight*, 237 Ark. 802, 376 S.W.2d 556 (1964). The jury wheel should therefore contain the names of at least 600 prospective petit jurors. §39-205.

APPENDIX III

LAW OR CHANCERY MANDATE

STATE OF ARKANSAS)
) SCT.
In The Supreme Court)

BE IT REMEMBERED, That at a term of the Supreme Court of the State of Arkansas, begun and held at the Court Room in the City of Little Rock, on the 3rd day, being the first Monday of October, A.D., 1977, amongst others were the following proceedings, to-wit:

On the 7th day of November, A.D., 1977, a day of said term

BOBBY J. NORRIS ..... *Appellant*

vs. No. CR 77-45

STATE OF ARKANSAS ..... *Appellee*

Appeal from Polk Circuit Court

Motion to stay mandate pending appeal to the United States Supreme Court is granted.

IN TESTIMONY, That the above is a true copy of the Order of said Supreme Court, rendered in the case therein stated, I, JIMMY H. HAWKINS, Clerk of said Supreme Court, hereunto set my hand and affix the Seal of said Supreme Court, at my office in the City of Little Rock this 16th day of November, A.D., 1977.

JIMMY H. HAWKINS, Clerk

By: /s/ Melissa Milhollen, D.C.

APPENDIX IV

SUPREME COURT OF THE UNITED STATES

No. A-589

BOBBY JOE NORRIS, *Petitioner*

v.

ARKANSAS

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

UPON CONSIDERATION of the application of counsel for petitioner(s),

IT IS ORDERED that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including February 15, 1978.

/s/ Harry A. Blackmun
Associate Justice of the Supreme
Court of the United States

Dated this 11th day of January, 1978.

APPENDIX V

[7*] IN THE

CIRCUIT COURT OF POLK COUNTY, ARKANSAS

IN THE MATTER OF JURY COMMISSIONERS)
FOR THE APRIL AND OCTOBER, 1976)
TERMS OF COURT.)

O R D E R

On this 14th day of October, 1975, in compliance with Act 568 of 1969, commonly referred to as the "Jury Wheel," the following are hereby named Jury Commissioners to be called in for service at least fifteen days prior to the first regular term of Court in 1976. John W. Hill, William G. Spencer, Jr., Belva Deramus, Vera Petrasek, Darrell Nesbitt, and Clayton Eddleman are hereby named as Commissioners.

At least fifteen days prior to the term of Court and on a date to be later set by the Judge, the Clerk will be directed to issue her summons for the above-named Commissioners to appear and be qualified for service.

The Clerk is directed to spread this Order on the Circuit Court records of this county.

IT IS SO ORDERED.

/s/ Bobby Steel, Circuit Judge
Ninth Judicial Circuit

*Numbers appearing in brackets in text indicate page numbers of original stenographic trial record and clerk's record of filings in the transcript of the case.

APPENDIX VI

[1-2] LIST OF RELEVANT DOCKET ENTRIES

1976

July 9, 1976 Cause set for trial Friday, August 20, 1976, at 9:00 A.M.

All Motions to be filed by the State or the defense must be filed prior to August 1st.

July 29, 1976 Motion To Quash Venire 8-20-76 Denied

July 29, 1976 Brief in Support of Motion to Quash Venire

July 29, 1976 Motion to Dismiss 8-20-76 Denied

July 29, 1976 Brief in Support of Motion to Dismiss

Aug. 5, 1976 Supplement to Motion to Quash Venire

Aug. 6, 1976 Brief in Support of Motion to Quash Venire as Supplemented

Aug. 20, 1976 Cause set for trial Wed. 10-27-76

Sept. 14, 1976 Order Denying Motion tc Dismiss

Sept. 21, 1976 Notice of Intent to Petition the Arkansas Supreme Court for Writ of Prohibition

Oct. 12, 1976 Petition for Writ of Prohibition Denied Filed

Oct. 29, 1976 The parties announce ready for trial. Jury selected, empaneled and sworn. Trial proceeds. Opening statements, testimony, instruction and arguments. Jury retires and returns the following verdict into open court: "We, the jury, find the defendant, Bobby J. Norris guilty and fix his punishment by three (3) years in the State Penitentiary, by a fine of $1,000.00" Signed: Jack H. Cunningham, Foreman

Oct. 29, 1976 Judgment of the court the defendant be and he is hereby sentenced to the Dept. of Correction for three (3) years and fined $1,000.00 together with cost. /s/ Bobby Steel, Judge

Oct. 29, 1976 Appeal bond set at $15,000.00

Nov. 23, 1976 Notice of Appeal and Certificate of Ordering Transcript Filed

1977

Jan. 31, 1977 Order Extending Time To File Transcript

APPENDIX VII

[3] IN THE

CIRCUIT COURT OF POLK COUNTY, ARKANSAS

STATE OF ARKANSAS ..... *Plaintiff*

vs. Docket No. CR-75-2

BOBBY JOE NORRIS ..... *Defendant*

MOTION TO QUASH VENIRE

Comes the Defendant, BOBBY JOE NORRIS, and for his Motion, states:

I.

That on the 30th day of April, 1975 twelve jurors were empaneled to sit as the jury to try the Defendant, BOBBY JOE NORRIS upon the charge brought against him by the State of Arkansas. The jury returned a verdict of guilty and fixed his punishment by confinement in the state penitentiary for ten (10) years and/or by a fine of $4,000.00 and upon said verdict the court entered judgment accordingly.

The jury consisted, among others, of Vera Petrasek who served as foreman and John W. Hill.

II.

The Court on October 14, 1975 entered its Order appointing and naming jury commissioners to select jurors to serve during the sessions of Court in the year 1976. Two of the said commissioners, namely, John W. Hill and Vera Petrasek were and are the same persons who sat in judgment upon the Defendant in his previous trial. A certified copy of the said Court Order is attached hereto, marked Exhibit "A" and made a part hereof by reference as though set forth verbatim.

III.

That said Commissioners met in closed session on or about March 10, 1976 and selected jurors to serve for the regular terms of the Polk County Circuit Court convening on the 3rd Monday in April, 1976 and on the third Monday in October, 1976 and at intermediate times during said year when the Court might be in session.

[4] IV.

That on March 10, 1976 some sixty-five (65) names were drawn from the jury wheel and on April 20, 1976 an additional twenty-five (25) names were drawn from the jury wheel both of which drawings occurred and took place outside of either the Circuit Court room or the Judge's Chambers and in one of the rooms comprising the office of the Circuit Clerk. Said names constituted the venire from which jurors were and are contemplated to be selected to serve in the trial of cases in the Polk County Circuit Court during its 1976 terms and sessions. In addition to the drawings on the two aforesaid dates, a third drawing was had

in open Court on July 1, 1976 comprising a list of 100 names additional to the venire.

V.

The Defendant, BOBBY JOE NORRIS, appealed his conviction to the Arkansas Supreme Court whereupon the Court determined error present in the proceedings, reversed the cause and remanded same to the Polk County Circuit Court for new trial. The Defendant BOBBY JOE NORRIS, is now scheduled to again be tried upon the same cause in this Court on August 20, 1976 and the entire venire from which jurors to hear his cause must be selected as well as the entire content of the jury wheel from which the venire was drawn is tainted and substantially prejudices his right to a fair trial by reason of the fact that a number of the persons whose names (by corresponding numbers) are presently in the jury wheel were selected by former jurors who were convinced of his guilt beyond a reasonable doubt to the extent that they voted unanimously with the other ten jurors who heard the case for conviction and the imposition of a severe sentence.

VI.

For further cause, the Defendant, BOBBY JOE NORRIS, contends that those members of the venire whose names were drawn on March [5] 10, 1976 and on April 20, 1976 were not drawn in accordance with law in that the law requires same to be drawn in open Court which has been construed to include the Judge's Chambers but no further. The substantial requirements of Act 568 of 1969, commonly referred to as the "Jury Wheel Act" have not been complied with as to these two instances thus abridging statutory and constitutional requirements and safeguards to insure a fair trial.

VII.

Defendant specifically states and pleads that as applicable to his case, the jury wheel in Polk County, Arkansas as used and applied in this particular instance denies him a fair trial by impartial jury as guaranteed by Amendment Six to the Constitution of the United States and Article Two, Section Ten of the Constitution to the State of Arkansas, by reason thereof constitutes a denial of due process of law guaranteed the Defendant by Amendment Five of the Constitution of the United States, and Article Two, Section Eight of the Constitution of the State of Arkansas, and abridges his privileges and immunities as a citizen of the United States, denies him due process of law and equal protection of the laws guaranteed by Amendment Fourteen to the Constitution of the United States, Article Two, Section Three of the Constitution of the State of Arkansas and denies him privileges and immunities and equality at law as guaranteed by Article Two, Section Eighteen of the Constitution of the State of Arkansas.

VIII.

Defendant states and in addition to the matters set forth herein above that concerning the names of petit jurors drawn from the jury wheel on March 10, 1976 and on April 20, 1976 same were drawn contrary to the requirements of the law as set forth in Hall v. State, 259 Ark. 815 (1976) in that same were drawn outside the courtroom, including the Judge's Chambers, and no precautions [6] were taken to avoid even the appearance of secrecy or of exclusion of the public.

IX.

In support of his contentions herein set forth, Defen-

dant attaches the affidavit of Mrs. Frances Garrett, Circuit Clerk of Polk County, Arkansas marked Exhibit "B" hereto and made a part hereof as though set forth verbatim; and, the certificate of Mrs. Frances Garrett, Circuit Clerk of Polk County, Arkansas marked Exhibit "C", made a part hereof by reference as though set forth verbatim and reflecting that the said John W. Hill and Vera Petrasek previously were members of the jury selected to try Defendant upon the charge for which he has been granted a new trial.

WHEREFORE, premises considered, Defendant prays the Court to quash the contents of the jury wheel as being unconstitutional application of the Jury Wheel Act in this instance; Defendant further specifically prays the Court to quash the jury panel drawn March 10, 1976 and April 20, 1976 for the reason that same were not drawn from the jury wheel in accordance with law.

/s/ Robert L. Shaw
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing Motion to Quash Venire was served upon Plaintiff by depositing in the regular United States Mails, addressed to Mr. J. David Maddox, Deputy Prosecutor, 507 Hickory Street, Mena, Arkansas and Mr. George E. Steel, Jr., Prosecutor, Nashville, Arkansas with sufficient postage affixed thereto on this 29th day of July, 1976.

/s/ Robert L. Shaw

Filed July 29, 1976.

[7] Exhibit "A" to motion to dismiss is a copy of the

order appointing jury commissioners which is set forth separately as Appendix V and herewith omitted from printing.

[8] Exhibit "B" to Motion to Dismiss.

AFFIDAVIT

STATE OF ARKANSAS)
) ss.
COUNTY OF POLK)

Comes now the undersigned Affiant, and after first having been duly sworn do hereby depose and state upon oath as follows:

I.

That Affiant is the duly elected, qualified, acting and commissioned Circuit Clerk in and for Polk County, Arkansas and as such is the custodian of the record of proceedings in the Circuit Court of Polk County, Arkansas and the minutes of said Court.

II.

That I was acting in my official capacity on April 30, 1975 when a jury was impaneled to hear and consider and render its verdict in the case styled "State of Arkansas v. Bobby Joe Norris" being docketed as number CR-75-2 in said Court.

III.

That I personally maintained a record of jurors selected to hear and try said case together with a record of Defendant's challenges, a record of the State's challenges and those persons excused from participation in the case by the

Court. A copy of said record maintained by me is attached hereto and made a part of this Affidavit.

IV.

On the 14th day of October, 1975 the Circuit Court of Polk County, Arkansas entered its Order appointing jury commissioners for the April and October, 1976 terms of said Court and two of said commissioners named, appointed and who actually acted as such were and are John W. Hill and Vera Petrasek.

I am personally acquainted with the said Vera Petrasek and John W. Hill and to my knowledge they are the same persons who served as jurors in the above mentioned case.

[9] V.

I further state that a list of some sixty-five (65) jurors was drawn from the jury wheel on March 10, 1976 in the office of the Circuit Clerk of Polk County, Arkansas located in the Courthouse at Mena. Similarly, on April 20, 1976 a list of twenty-five (25) additional jurors was drawn from the jury wheel in the office of the Circuit Clerk at the aforesaid place. I have no knowledge that notice of any kind was given to the public that said drawing would take place in the office of the Circuit Clerk rather than in open Court or the Court's Chambers both of which are located on the second floor of the Courthouse in Mena, my office being located on the first floor of same. I do not recall that any members of the public generally were present at the drawings from the jury wheel held as aforesaid. Attached hereto and made a part of this Affidavit are two lists of veniremen drawn at the two specified times in my office.

VI.

The statements contained herein are a true statement of the facts surrounding the appointment of jury commissioners for the April and October, 1976 terms of the Circuit Court of Polk County, Arkansas and the method of selection of petit jurors through April 20, 1976 to the best of my knowledge and according to the records of the Circuit Court of Polk County, Arkansas of which I am lawful custodian.

DATED at Mena, Arkansas this 28th day of July, 1976.

/s/ Frances Garrett, Circuit Clerk

SUBSCRIBED AND SWORN to before me, a Notary Public, on this 28th day of July, 1976.

/s/ Vickie D. Hendrix, Notary Public

MY COMMISSION EXPIRES:
April 21, 1980
(SEAL)

[10] Attachment to Clerk's Affidavit.

IN THE
CIRCUIT COURT OF POLK COUNTY, ARKANSAS

STATE OF ARKANSAS ..... *Plaintiff*

vs. No. CR-75-2

BOBBY JOE NORRIS ..... *Defendant*

JURY SELECTED TO TRY CASE:

1. Charles D. Stricklin
2. Carol E. Nesbitt
3. Travis E. Turner
4. Jo Ann Walker
5. Madia M. Holman
6. George S. Davis
7. Patty Sue Rowe
8. John D. Hendrix
9. Charles F. Parker
10. Vera Petrasek
11. John W. Hill
12. Anna Sue Tunnell

Defendant's Challenges:

1. Hester M. Aynes
2. Hugo C. Gottwald
3. Amon Hamby
4. Don J. Bray
5. Alton E. Le Blanc
6. Gerald Wayne Petross
7. Vernice Cobb
8. Dee Thomas

State Challenges:

1. Eunice Estella Puckett
2. Donna S. Hogan
3. Lonia Rutell
4. Mable M. Cunningham
5. Lana Carolyn Cook
6. Harvey Davis

Excused by Court:

1. Gerald Johnson
2. William Deramus
3. John Edwards
4. Richard Hilton
5. James Franz
6. Sandra Riley
7. Lucie Mary Cox
8. Jewell Reid

"We, the Jury, find the Defendant Bobby Joe Norris guilty and fix his punishment by confinement in the State Penitentiary for 10 years and/or by a fine of $4,000.00."

/s/ Vera Petrasek, Foreman

[12] A second attachment to Clerk's Affidavit is a list of sixty-five names drawn from the jury wheel in contravention of law and subsequently quashed. Printing of the list is herewith omitted.

[13] A third attachment to Clerk's Affidavit is a list of twenty-five names drawn from the jury wheel in contravention of law and subsequently quashed. Printing of the list is herewith omitted.

[11] CLERK'S CERTIFICATE

STATE OF ARKANSAS)
) ss.
COUNTY OF POLK)

I, FRANCES GARRETT, Circuit Clerk in and for the County and State aforesaid, do certify that the foregoing page of typewriting contains a true and complete record of the jury selection including the excercises of preemptory challenges by the State and by the Defendant and of veniremen excused by the Court in the Circuit Court of said County, in the case therein stated.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix the seal of said Court on this 28th day of July, 1976.

/s/ Frances Garrett, Circuit Clerk

(SEAL)

APPENDIX VIII

[21] IN THE
CIRCUIT COURT OF POLK COUNTY, ARKANSAS

STATE OF ARKANSAS ..... *Plaintiff*

vs. Docket No. CR-75-2

BOBBY JOE NORRIS ..... *Defendant*

MOTION TO DISMISS

Comes now the Defendant, BOBBY JOE NORRIS, and for his Motion, states:

I.

That Defendant is charged herein with an alleged violation of Act 590 of 1971 as amended by Act 186 of 1973, commonly referred to as the Uniform Controlled Substances Act. Specifically, Defendant stands charged herein with an alleged violation of that part of the Act codified as Arkansas Statute 82-2617, Section (a) Subsection (1) (part) (ii) which states as follows:

> Except as authorized by this Act (82-2601 — 82-2638), it is unlawful for any person to manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance.
>
> (1) Any person who violates this subsection with respect to:
>
> > (ii) any other controlled substance classified in Schedule I, II, III, or VI is guilty of a felony and upon conviction may be imprisoned in the State penitentiary for not less than three (3) years nor more than ten (10) years, fined not more than $15,000.00 or both.

II.

The alleged violation by the Defendant in this instance did not constitute an offense prohibited by the law of the State of Arkansas at the time of its purported commission for the reason that the proscribed contraband, to wit: "Controlled Substance" is alleged in the prosecuting attorney's information to be cannibas sativa L. commonly called marijuana and same is not by definition in the Act a controlled substance; therefore, the purported conduct of the Defendant as alleged and charged to have occurred on January 3, 1975 did not constitute an offense or crime within the meaning of the laws relating to same at the time and this Court has no [22] jurisdiction to hear and consider the charge against Defendant.

III.

Further, the forestated statute upon which the charge is based is vague, uncertain and ambiguous to the extent that it denies him due process of the law guaranteed by the Fourteenth Amendment to the Constitution of the United States and a similar provision found in Article 2, Section 8 of the Constitution of the State of Arkansas and, accordingly, is unconstitutional both on its face and in its application in this instance. Therefore, the Statute is void and this Court has no jurisdiction to try the Defendant upon any charge based thereon.

WHEREFORE, premises considered Defendant prays the Court to dismiss the charge herein filed against him by Prosecuting Attorney's information, to grant him discharge and release both Defendant and his surety from the bond herein filed; that he have all his costs herein expended and

laid out and such other relief as the Court does seem just and proper.

/s/ Robert L. Shaw
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing Motion to Dismiss was served upon Plaintiff by depositing of same in the regular United States Mails addressed to Honorable George Steel, Jr., Prosecuting Attorney, Nashville, Arkansas and Honorable J. David Maddox, Deputy Prosecuting Attorney, 507 Hickory Street, Mena, Arkansas 71953, with sufficient postage affixed thereto on this 29th day of July, 1976.

/s/ Robert L. Shaw

APPENDIX IX

[51] IN THE
CIRCUIT COURT OF POLK COUNTY, ARKANSAS

STATE OF ARKANSAS ..... *Plaintiff*

vs. Docket No. CR-75-2

BOBBY JOE NORRIS ..... *Defendant*

HEARING ON MOTIONS TO QUASH THE JURY VENIRE AND DISMISS

On the 14th day of September, 1976, the above mentioned causes came on for hearing before the Honorable Bobby Steel, Circuit Judge of the Ninth Judicial Circuit of which Polk County is a part.

The State of Arkansas was represented by its Prosecuting Attorney, Mr. George Steel, Jr., Nashville, Arkansas, and he was assisted by his Polk County deputy, Mr. David Maddox, Mena, Arkansas.

The defendant, Bobby Joe Norris, was represented by his attorney, Mr. Robert L. Shaw, Mena, Arkansas.

And the following proceedings in this connection were had and done:

[52] PROCEEDINGS

THE COURT:

In Case No. CR-75-2, styled, State of Arkansas v. Bobby Joe Norris, this is a pretrial hearing specifically scheduled concerning various motions filed by the defendant all of which are to be heard this morning. Mr. Shaw states in open court that he desires to hear — which motion first, Mr. Shaw?

MR. ROBERT SHAW:

Whatever the Court's pleasure is, Your Honor.

THE COURT:

The first one on the docket is the Motion to Quash the Jury Venire.

MR. ROBERT SHAW:

That will be fine, Your Honor. Your Honor, that is based upon two separate matters, one of which I think the Court's recent rulings this week will take care of and that is the actual mechanics of drawing from the jury wheel. I understand now that if we draw again in September, any objections I may have had to the present panel would be taken care of by a new drawing.

THE COURT:

All right, sir.

MR. ROBERT SHAW:

The other point is — is that the wheel itself as applied to this case should be quashed and new commissioners [53] appointed to replenish the same for the reason that two of the commissioners who have contributed to the wheel in this term are ineligible to serve as jury commissioners, and I say that for two reasons. One is that they have previously set within the past two years on the jury before which this man has been tried. And the other is that the qualifications for a jury commissioner set forth in the Statute says that they must be qualified petit jurors or possess the qualifications of petit jurors. They would not be eligible by reason of having served as petit jurors in the past two years and they would not be eligible in this case because they have already heard it once. And so we are asking in this case that a new wheel be drawn. In other words, that this wheel, we would say, is tainted by disqualified commissioners.

THE COURT:

Does the State have any desire to be heard on this?

MR. GEORGE STEEL, JR.:

No, sir.

THE COURT:

Gentlemen, it is my judgment that when the legislature spoke of qualifications for jury commissioners — they mentioned that they shall have the same qualifications as members of the petit jury. Now, under the Statute

[54] setting forth the qualifications of petit jurors, it enumerates what would be necessary to be qualified petit jurors. I can in no way see how the legislature would interpret the fact that simply because a person served on the petit jury one year would not be qualified to serve as a jury commissioner. Our qualifications are, you can't serve as a petit juror more than once in a two-year period. Now, our qualification for a jury commissioner is that you can't serve as a jury commissioner more frequently than once every four years and that's the interpretation that I am placing on this legislative enactment and, accordingly, I am going to deny the defendant's motion.

MR. ROBERT SHAW:

Your Honor, there is one other section in that motion that I didn't mention that I do want the record to reflect that we brought up here and that is the fact that the Jury Wheel Act or at least that section of it that sets forth the qualifications is unconstitutional because it sets forth various elements that must be conidered in determining the qualifications of jurors and it sets no criteria whatsoever on how you determine these things. One of them, of course, is obvious, it says that they must be of sound judgment and approved character. And it doesn't say what constitutes approved [55] character, or what constitutes sound judgment or in whose opinion or what, and I maintain that that is so vague and uncertain that it denies due process of law to any defendant who must select the jury under the provisions of that Act.

THE COURT:

What year was that Act enacted into law, Mr. Shaw?

MR. ROBERT SHAW:

I believe it was 1969 or '70, Your Honor.

THE COURT:

That is the new Jury Wheel Act you are referring to?

MR. ROBERT SHAW:

Yes, sir.

THE COURT:

Didn't the old Act say the same thing?

MR. ROBERT SHAW:

I really couldn't tell you, Judge.

THE COURT:

Citizens of approved character, good integrity, sound judgment, reasonable information.

MR. ROBERT SHAW:

I am sure it does, Judge.

THE COURT:

Now, I am under the impression that that particular part of it has been the law for fifty (50) or more years. **[56]** Do you have any Supreme Court decisions to sustain your contention in that respect?

MR. ROBERT SHAW:

No, sir, I don't, I am just calling it up for the first time that I know of.

THE COURT:

That part of the motion will also be denied. I am holding the Act is constitutional.

MR. ROBERT SHAW:

Thank you. Save my exceptions and I make my objections to the ruling of the Court.

THE COURT:

Now, does that take care of your motion to Quash the Jury Venire?

MR. ROBERT SHAW:

That should take care of that.

THE COURT:

Now, as respects the Motion to Dismiss, may we turn our attention to that?

MR. ROBERT SHAW:

Your Honor, concerning the Motion to Dismiss, and the Court is aware, a part of this Act 590 of 1971 as amended by 186 in 1973 was recently construed in the construction of it, the word "controlled substances" was defined by the Supreme Court. That definition clearly establishes that the Act as it then existed contained definitions [57] which applied throughout the Act, and the word "controlled substances" under the construction given by the Supreme Court did not include the substance, marijuana. Marijuana was put into a separate schedule.

THE COURT:

What schedule was it placed in?

MR. ROBERT SHAW:

It was placed in Schedule 6.

THE COURT:

Yes, sir.

MR. ROBERT SHAW:

It has been construed as to during that period of time before the legislature cured the defect in the law as possession of the controlled substance, marijuana, did not constitute a crime or misdemeanor. And we contend in this motion that that construction must be given uniform application throughout the Act. And the word "controlled substances" must be defined as set forth in the Act uniformly as in the White decision. and if you do that, then, the section that my client is charged under would be so ambiguous that you couldn't tell whether it was against the law or whether it wasn't. And, of course, the rule of strict construction says, "any doubts must be resolved in favor of the accused."

THE COURT:

Mr. Shaw, let's attempt to analyze this a little better [58] for my benefit, if you will. I am familiar with Justice Byrd's decision in the Johnny R. White case. In reading that decision, it was my impression that he was pointing out that the legislature in 1973 failed to state a penalty for mere possession of marijuana. I was under the impression that in his opinion, he stated they did provide for a penalty for possessing it for the purpose of sale.

MR. ROBERT SHAW:

Your Honor, I will agree in part with the Court on it. Of course, I guess the thing is open to interpretation by anyone that reads it and obviously I am representing

the defendant and going to try to construe it more in his favor. In reaching that conclusion though, they, the Court and Justice Byrd had to make a construction of what the word "controlled substance" meant. And they spell that out very clearly in that decision. Now, the Act, itself, in that case said that it would be unlawful to possess a controlled substance. They reached the conclusion that there would be no penalty for a controlled substance of marijuana or a substance of marijuana because it was not a controlled substance by definition in the Act. And if it was not a controlled substance in that section, I am very doubtful that it is a controlled substance in any section of the Act. And in the section that my client is charged [59] under refers to —

THE COURT:

What is that section that your client is charged under?

MR. ROBERT SHAW:

In the same Statute number but a different —

THE COURT:

Well, isn't he charged under Act 186 of 1973, could we agree on that?

MR. ROBERT SHAW:

Yes, sir, as that was the last Act to amend — it would be Act 590 of 1971 as amended by 186.

THE COURT:

As amended, but the amendment was provided for in Act 186 of 1973, is that correct?

MR. ROBERT SHAW:

Yes, sir.

THE COURT:

Now, in Act 186 of 1973, marijuana was removed from Schedule I of Article 2 and placed in a new Schedule 6 from his opinion?

MR. ROBERT SHAW:

Yes, sir.

THE COURT:

"No amendment was made at that time to Section I of Act 590 which defined a controlled substance as a drug, substance or a Immediate precursor in Schedules 1 through [60] five (5) of Article 2 of this Act. However, Act 186 of 1973, did provide and it mentions Section 2-A under Section 2, except as authorized by this Act, it is unlawful for any person to manufacture, deliver, or possess with intent to manufacture or deliver a controlled substance. And it provides for a penalty for that."

MR. ROBERT SHAW:

Yes, sir, now, that is the whole point that what they have been made unlawful is a controlled substance and by definition of the Act, marijuana was not a controlled substance at that time.

THE COURT:

I am wondering in view of the motion that has been filed if the State's attorney has taken this up through a research of their own or talked to the Attorney General's office concerning their opinion on the matter?

MR. GEORGE STEEL, JR.:

No, sir, Your Honor.

THE COURT:

Do you think that might be helpful to you to do so, Gentlemen?

MR. GEORGE STEEL, JR.:

I do. I would like to have — In view of the motion filed in this case, I would like to have an opportunity to talk with the Attorney General's office to get their [61] opinion of the Court's decision in the Johnny White case.

THE COURT:

Well, I have no desire to try this case again and if a conviction be imposed to have the Supreme Court reverse and dismiss by virtue of Act 186 of 1973. I think that we ought to be certain about it, and I don't think that it would take over two or three days if you call it to their attention. And, Mr. Shaw, I will very frankly tell you this that in the event the — I would hope that the Prosecuting Attorney would be guided by the Attorney General's opinion in this respect, and, perhaps, if the Attorney General agrees with you, then, the State would move to dismiss the case. If the Attorney General did not agree with you, then, I am certain that Mr. Steel, representing the State, would want to try it, and I could be afforded a chance to give my own ruling prior to trial. Now, you had mentioned to me over the telephone that you might like to go up on a writ. If you would prefer to do that, it would be all right with me. I am doubtful that they would hear your writ.

MR. ROBERT SHAW:

Well, that is doubtful in my mind too, Your Honor. I am not going to rule out that possibility, but we are not going to try this case until the regular criminal week in October anyway, as I understand it.

[62] THE COURT:

That's right.

MR. ROBERT SHAW:

And that will be plenty of time assuming that the Prosecutor gets something out of the Attorney General to reconsider that matter.

THE COURT:

My personal opinion is that possession for the purpose of sale is provided for in this Act 186 of 1973 and a penalty so prescribed, but I would certainly probably be guided by the Attorney General's opinion. I think Mr. George Steel would. So, you have presented your motion as far as you are concerned in that respect?

MR. ROBERT SHAW:

Yes, sir.

THE COURT:

You don't have any ~~evidenee to submit?~~

MR. ROBERT SHAW:

We don't have any evidence on it.

THE COURT:

Well, let me hold that in abeyance pending Mr. Steel's investigation from the Attorney General. Now, let's take up the next one, if you will?

MR. ROBERT SHAW:

I believe that covers the motions in this case, Your Honor.

[63] THE COURT:

I will give you not later than September the 20th, and I want this on the record that the defendant is given to the 20th of September to file the motions he desires.

MR. ROBERT SHAW:

Thank you.

* * * * *

APPENDIX X

[41] IN THE

CIRCUIT COURT OF POLK COUNTY, ARKANSAS

STATE OF ARKANSAS ..... *Plaintiff*

vs. Docket No. ——

BOBBY JOE NORRIS ..... *Defendant*

ORDER DENYING MOTION TO DISMISS

On this day the Court after due consideration of the Motion To Dismiss herein filed by Defendant on July 29, 1976, determines that said Motion should be, and hereby is, denied to which ruling the Defendant has duly objected and his exceptions saved.

IT IS SO ORDERED.

/s/ Bobby Steel, Circuit Judge
DATED: 9-14-76

APPENDIX XI

[48] IN THE

CIRCUIT COURT OF POLK COUNTY, ARKANSAS

STATE OF ARKANSAS ..... *Plaintiff*

vs. Docket No. CR-75-2

BOBBY JOE NORRIS ..... *Defendant*

JURY SELECTED TO TRY CASE:

1. Jewell F. Teater
2. Orville T. Ogden
3. Kaye Hunter
4. Gary F. Dickinson
5. Henry A. Kinnerson
6. Loraine Kenady
7. Carroll G. Davis
8. Bobby R. Page
9. Bessie C. Pitingoro
10. Jack H. Cunningham
11 George W. Crane, Jr.
12. Martin G. Kinports
13. Brenda G. Forrester

DEFENSE CHALLENGES:

1. Iva M. Miller
2. Gloria Sue Montgomery
3. Susane Douglas
4. Dale S. Sanders
5. Virgil A. Bradley
6. Orval L. Baber
7. Loretta Miller
8. Maria G. Jones

APPENDIX XII

[43A] IN THE

CIRCUIT COURT OF POLK COUNTY, ARKANSAS

STATE OF ARKANSAS ..... *Plaintitff*

vs. Docket No. CR-75-2

BOBBY JOE NORRIS ..... *Defendant*

JUDGMENT

On this 29th day of October, 1976, this cause comes on for trial. The State of Arkansas being represented by its Prosecuting Attorney, Mr. George Steel, Jr., Nashville, Arkansas, and Deputy Prosecuting Attorney, Mr. David Maddox, Mena, Arkansas, and the Defendant, Bobby Joe Norris, being present in court and represented by his attorney, Mr. Robert L. Shaw, Mena, Arkansas.

All parties announce ready for trial. A jury selected from the regular venire was chosen to try the case and after opening statements, testimony was adduced on behalf of the State and the Defendant; the jury was instructed and arguments made by the respective counsel.

The jury retired to consider their verdict and returned the following verdict in open court. "We, the jury, find the defendant, Bobby J. Norris, guilty and fix his punishment by three (3) years in the State Penitentiary, by a fine of $1,000.00." Signed Jack Cunningham, Foreman.

IT IS THEREFORE BY THE COURT, CONSIDERED, ORDERED AND ADJUDGED that the Defendant be and he is hereby sentenced to the Arkansas Department of

Correction for a period of three (3) years, together with a fine in the sum of $1,000.00.

/s/ Bobby Steel, Circuit Judge
Ninth Judicial Circuit

Filed: March 18, 1977.

APPENDIX XIII

[46] IN THE

CIRCUIT COURT OF POLK COUNTY, ARKANSAS

STATE OF ARKANSAS ..... *Plaintiff*

vs. Docket No. CR-75-2

BOBBY JOE NORRIS ..... *Defendant*

NOTICE OF APPEAL AND CERTIFICATE
OF ORDERING TRANSCRIPT

Comes now Defendant, BOBBY JOE NORRIS, and hereby gives notice that he appeals the verdict, conviction, judgment and sentence had in this cause in the Circuit Court of Polk County, Arkansas to the Supreme Court of Arkansas. Defendant further states and certifies that he has concurrently with the filing hereof ordered a transcript of the proceedings from the Court Reporter for the Ninth Judicial Circuit of Arkansas, MRS. DAISY STEEL, and a transcript of the record from the Circuit Clerk of Polk County, Arkansas, MRS. FRANCES GARRETT.

/s/ Robert L. Shaw

Filed: November 23, 1976.

APPENDIX XIV

[47] IN THE

CIRCUIT COURT OF POLK COUNTY, ARKANSAS

STATE OF ARKANSAS ..... *Plaintiff*

vs. Docket No. CR-75-2

BOBBY JOE NORRIS ..... *Defendant*

DESIGNATION OF RECORD

Comes now the Defendant, and concurrently herewith giving Notice of Appeal and certifying to the ordering of a transcript in the captioned case, does hereby designate the entire record in the case to be included in the transcript for appeal purposes.

/s/ Robert L. Shaw

Filed: November 23, 1976.